IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 6084 of 2004
Date of decision : 8.12.2006

Sain Dass & Anr.

.....Petitioners.

Versus

Mohd. Farook & Ors.

.....Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Ashwani Talwar, Advocate
for the petitioners.

Mr. B.S. Bedi, Advocate
for the respondents.

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VINOD K. SHARMA,J.(ORAL)

Present revision petition has been filed against the order of the Appellate Authority, Panipat ordering the eviction of the petitioners from the shop in dispute on the ground of subletting.

The only ground taken by the petitioners against the plea of subletting was that the alleged subtenant was in fact a partner of the tenant and, therefore, a case of subletting. The petitioners, however, failed to produce the original partnership deed on record, placed on record only photo copy which was not prima facie admissible in evidence as permission for production of secondary evidence was not taken. It was further admitted by the petitioners that they did not have any other record of the partnership except accounts maintained on a note book. The said note books/account books was also not produced.

On appreciation of evidence, the learned Appellate Authority came to the conclusion that the petitioners had failed to prove that there was any agreement entered into between the petitioners and respondents No. 1 & 2 nor there was any evidence on the file showing that the profit and loss was shared between the parties and, therefore, it was held that the alleged partnership was not a genuine. The learned Appellate Authority further came to the conclusion that there was absolutely no evidence on behalf of respondent No.1 that the petitioner has been getting any share from cloth business. It may be further noticed that the petitioner had admitted in his cross examination that he was running a separate business and the factum of shop being opened and closed by the alleged sub tenants was proved on record. The learned Appellate Authority further came to the conclusion that the petitioner had parted with possession of the shop in favour of the sub tenants for consideration. In the absence of any material on record that the petitioner ever shared the profit and loss and further that the original partnership deed was not produced, the learned appellate authority was right in coming to the conclusion that the tenant had sub let the premises and, therefore, was liable to be ejected from the shop in dispute.

Therefore, there is no illegality or error in the order which may call for interference by this Court.

Dismissed.

The learned counsel for the petitioners submits that as it is a commercial property he may be granted six months time for vacating the premises.

Keeping in view the fact that it is a commercial property the petitioner need some time to shift his established business from the demised

premises. The request of the petitioners is accepted and the petitioners are granted the time upto 31.3.2007 to vacate the premises. However, this would be subject to the conditions :

(i) that the petitioners would file an undertaking in this Court within 15 days from today, undertaking therein that they would hand over the vacant possession of the shop to the respondent-landlord on or before 31.3.2007.

(ii) that the petitioners would clear all the arears of rent till date and continue to pay the future rent in advance by 10th of each month during this period.

8.12.2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**